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Filing date: **03/10/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060981
Party	Plaintiff Diageo North America, Inc.
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Date	03/10/2015
Attachments	HEWITT-BELL Amended Petition to Cancel - Final.pdf(94720 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of

Registration No. : 3,687,113
Issue Date : September 22, 2009
Registrant : Sandra M. Hewitt-Bell DBA Hewitt-Bell Wine Cellars
Mark : HEWITT-BELL
International Class : 33

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DIAGEO CHATEAU & ESTATE :
WINES COMPANY, :
Petitioner, : Cancellation No.: 92060981
v. :
SANDRA M. HEWITT-BELL DBA :
HEWITT-BELL WINE CELLARS, :
Respondent.

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FIRST AMENDED PETITION FOR CANCELLATION

Petitioner, Diageo Chateau & Estate Wines Company, believes that it is or will be damaged by, and hereby petitions to cancel, Registration No. 3,687,113 of the designation HEWITT-BELL for grape wine.

COUNT I

1. Petitioner, Diageo Chateau & Estate Wines Company, is a California corporation having its principal place of business at 240 Gateway Road West, Napa, California 94558.

2. Upon information and belief, respondent, Sandra M. Hewitt-Bell, is an individual who is doing business as Hewitt-Bell Wine Cellars and has an address at 4323 Kingsford Drive, Napa, California 94558.

3. Petitioner is engaged in the business of producing, advertising, offering for sale, selling and distributing alcoholic beverages, including wines, throughout the United States, and has been for many years.

4. Since long prior to June 12, 2008, the filing date of respondent's application to register HEWITT-BELL, petitioner has been and now is producing, advertising, offering for sale, selling and distributing wine under its trademark HEWITT. Upon the introduction of petitioner's wine so marked upon the market and continuously thereafter, it has become and now is famous, and is well and favorably known to the public and the trade by the trademark HEWITT, which is closely and universally associated with petitioner and its products as a means by which petitioner and its products have become known to the public and their source or origin identified.

5. Petitioner is the owner of Registration Nos. 2,907,426 and 3,695,962 of the trademark HEWITT in the United States Patent and Trademark Office. These registrations are presently outstanding and validly subsisting.

6. Respondent is the owner of Registration No. 3,687,113 of the trademark HEWITT-BELL for wine, issued on September 22, 2009.

7. Upon information and belief, respondent has discontinued use in commerce as defined in the United States Trademark Act, 15 U.S.C. § 1051, et seq., of the designation HEWITT-BELL for wine, and has no intent to resume such use.

8. Registration No. 3,687,113 has become abandoned and should be cancelled under Section 14(3) of the United States Trademark Act, 15 U.S.C. § 1064(3).

9. Petitioner is likely to be, and is being, harmed by the continued registration of Registration No. 3,687,113 of the trademark HEWITT-BELL, which if used is likely to cause confusion with petitioner's trademark HEWITT, because the existence of Registration No. 3,687,113 is likely to interfere with petitioner's continued rights in petitioner's well-known registered trademark HEWITT, which has long been used for, and is registered for, wine.

COUNT II

10. Petitioner repeats and reavers paragraphs 1 through 9 of the Petition for Cancellation.

11. Upon information and belief, on or about September 26, 2014, respondent filed with the United States Patent and Trademark Office a "Declaration of Use and/or Excusable Nonuse of Mark in Commerce Under Section 8" ("Section 8 Declaration") for Registration No. 3,687,113, in which respondent represented to the Patent and Trademark Office that the mark covered by Registration No. 3,687,113, namely, HEWITT-BELL, was on September 26, 2014, still in use in commerce in connection with wine.

12. Upon information and belief, respondent was not using the mark HEWITT-BELL in commerce in connection with wine on September 26, 2014, when its Section 8 Declaration was signed and filed with the Patent and Trademark Office.

13. Upon information and belief, respondent made the representation set forth in paragraph 11 above knowing such representation to be false, and such representation was made with the intent of deceiving the Patent and Trademark Office into maintaining Registration No. 3,687,113 on the Register, thereby maintaining rights in the HEWITT-BELL trademark to which respondent was and is no longer entitled.

14. Respondent's knowing execution and filing of a false Section 8 Declaration to maintain Registration No. 3,687,113 constitutes fraud, and consequently Registration No. 3,687,113 should be cancelled under Section 14(3) of the United States Trademark Act, 15 U.S.C. § 1064(3).

WHEREFORE, petitioner prays that its Petition for Cancellation be granted and that Registration No. 3,687,113 be cancelled.

Respectfully submitted,

DORSEY & WHITNEY LLP

Dated: March 10, 2015

By /Susan Progoff/
Susan Progoff
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Attorneys for Opposer,
Diageo North America, Inc.

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of
Registration No. : 3,687,113
Issue Date : September 22, 2009
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DIAGEO CHATEAU & ESTATE :
WINES COMPANY, :
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Petitioner, :
 : Cancellation No.: 92060981
v. :
 :
SANDRA M. HEWITT-BELL DBA :
HEWITT-BELL WINE CELLARS, :
 :
Respondent.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **FIRST AMENDED PETITION FOR CANCELLATION** has been served upon the Respondent by mailing a true copy thereof by First Class Mail, postage prepaid addressed to:

Sandra M. Hewitt-Bell
4323 Kingsford Drive
Napa, California 94538

on March 10, 2015.

/Kaydi Osowski/
Kaydi Osowski